

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

No. 2839

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**Introduced by Assembly Member Thurmond**

February 19, 2016

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An act to amend ~~Section 1270~~ *Sections 1205 and 2900.5* of the Penal Code, relating to criminal ~~procedure~~ *penalties*.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2839, as amended, Thurmond. ~~Criminal procedure: release on defendant's own recognizance.~~ *Criminal penalties: nonpayment of fines.*

*Existing law permits a judgment against a criminal defendant that orders the defendant to pay a fine, other than a restitution fine or order, to also direct that he or she be imprisoned until the fine is satisfied. Existing law requires the judgment to specify the term of imprisonment for nonpayment of the fine, and prohibits that term from exceeding one day for each \$125 of the fine, or exceeding the term for which the defendant may be sentenced for the offense of which he or she has been convicted.*

*This bill would prohibit the term of imprisonment for nonpayment of a fine from exceeding one day for each \$125 of the base fine or the term for which the defendant may be sentenced.*

*Existing law also requires that in all felony and misdemeanor convictions, when the defendant has been in custody, that all days of custody of the defendant, as specified, are to be credited upon his or her term of imprisonment, or credited to any fine, on a proportional basis, that may be imposed, at the rate of not less than \$125 per day, in the discretion of the court imposing the sentence.*

*This bill would specify that the rate of credit under those provisions be credited to the term of imprisonment of the defendant or credited to the base fine that may be imposed.*

~~Existing law provides that a defendant who is in custody and arraigned for a misdemeanor offense, or who has been arrested upon an out-of-county warrant arising from a case involving only misdemeanors, is entitled to be released on his or her recognizance unless the court finds that the release will compromise public safety or will not reasonably ensure the appearance of the defendant, in which case the court is required to set bail and specify conditions, if any, for release.~~

~~This bill would make technical, nonsubstantive changes to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1205 of the Penal Code is amended to  
2     read:

3     1205. (a) A judgment that the defendant pay a fine, with or  
4     without other punishment, may also direct that he or she be  
5     imprisoned until the fine is satisfied and may further direct that  
6     the imprisonment begin at and continue after the expiration of any  
7     imprisonment imposed as a part of the punishment or of any other  
8     imprisonment to which the defendant may have been sentenced.  
9     The judgment shall specify the term of imprisonment for  
10    nonpayment of the fine, which shall not be more than one day for  
11    each one hundred ~~twenty-five~~ *twenty-five* dollars (\$125) of the  
12    *base* fine, nor exceed the term for which the defendant may be  
13    sentenced to imprisonment for the offense of which he or she has  
14    been convicted. A defendant held in custody for nonpayment of a  
15    fine shall be entitled to credit on the fine for each day he or she is  
16    held in custody, at the rate specified in the judgment. When the  
17    defendant has been convicted of a misdemeanor, a judgment that  
18    the defendant pay a fine may also direct that he or she pay the fine  
19    within a limited time or in installments on specified dates, and that  
20    in default of payment as stipulated he or she be imprisoned in the  
21    discretion of the court either until the defaulted installment is  
22    satisfied or until the fine is satisfied in full; but unless the direction  
23    is given in the judgment, the fine shall be payable.

(b) Except as otherwise provided in case of fines imposed, as a condition of probation, the defendant shall pay the fine to the clerk of the court, or to the judge if there is no clerk, unless the defendant is taken into custody for nonpayment of the fine, in which event payments made while he or she is in custody shall be made to the officer who holds the defendant in custody, and all amounts paid shall be paid over by the officer to the court that rendered the judgment. The clerk shall report to the court every default in payment of a fine or any part of that fine, or if there is no clerk, the court shall take notice of the default. If time has been given for payment of a fine or it has been made payable in installments, the court shall, upon any default in payment, immediately order the arrest of the defendant and order him or her to show cause why he or she should not be imprisoned until the fine or installment is satisfied in full. If the fine or installment is payable forthwith and it is not paid, the court shall, without further proceedings, immediately commit the defendant to the custody of the proper officer to be held in custody until the fine or installment is satisfied in full.

(c) This section applies to any violation of any of the codes or statutes of this state punishable by a fine or by a fine and imprisonment.

(d) Nothing in this section shall be construed to prohibit the clerk of the court, or the judge if there is no clerk, from turning these accounts over to another county department or a collecting agency for processing and collection.

(e) The defendant shall pay to the clerk of the court or the collecting agency a fee for the processing of installment accounts. This fee shall equal the administrative and clerical costs, as determined by the board of supervisors, or by the court, depending on which entity administers the account. The defendant shall pay to the clerk of the court or the collecting agency the fee established for the processing of the accounts receivable that are not to be paid in installments. The fee shall equal the administrative and clerical costs, as determined by the board of supervisors, or by the court, depending on which entity administers the account, except that the fee shall not exceed thirty dollars (\$30).

(f) This section shall not apply to restitution fines and restitution orders.

*SEC. 2. Section 2900.5 of the Penal Code is amended to read:*

2900.5. (a) In all felony and misdemeanor convictions, either by plea or by verdict, when the defendant has been in custody, including, but not limited to, any time spent in a jail, camp, work furlough facility, halfway house, rehabilitation facility, hospital, prison, juvenile detention facility, or similar residential institution, all days of custody of the defendant, including days served as a condition of probation in compliance with a court order, credited to the period of confinement pursuant to Section 4019, and days served in home detention pursuant to Section 1203.016 or 1203.018, shall be credited upon his or her term of imprisonment, or credited to any ~~fine, including, but not limited to, base fines, on a proportional basis;~~ *base fine* that may be imposed, at the rate of not less than one hundred ~~twenty-five~~ *twenty-five* dollars (\$125) per day, or more, in the discretion of the court imposing the sentence. If the total number of days in custody exceeds the number of days of the term of imprisonment to be imposed, the entire term of imprisonment shall be deemed to have been served. In any case where the court has imposed both a prison or jail term of imprisonment and a fine, any days to be credited to the defendant shall first be applied to the term of imprisonment imposed, and thereafter the remaining days, if any, shall be applied to the ~~fine, including, but not limited to, base fines, on a proportional basis;~~ *base fine*.

(b) For the purposes of this section, credit shall be given only where the custody to be credited is attributable to proceedings related to the same conduct for which the defendant has been convicted. Credit shall be given only once for a single period of custody attributable to multiple offenses for which a consecutive sentence is imposed.

(c) For the purposes of this section, “term of imprisonment” includes any period of imprisonment imposed as a condition of probation or otherwise ordered by a court in imposing or suspending the imposition of any sentence, and also includes any term of imprisonment, including any period of imprisonment prior to release on parole and any period of imprisonment and parole, prior to discharge, whether established or fixed by statute, by any court, or by any duly authorized administrative agency.

(d) It is the duty of the court imposing the sentence to determine the date or dates of any admission to, and release from, custody prior to sentencing and the total number of days to be credited

pursuant to this section. The total number of days to be credited shall be contained in the abstract of judgment provided for in Section 1213.

(e) It is the duty of any agency to which a person is committed to apply the credit provided for in this section for the period between the date of sentencing and the date the person is delivered to the agency.

(f) If a defendant serves time in a camp, work furlough facility, halfway house, rehabilitation facility, hospital, juvenile detention facility, similar residential facility, or home detention program pursuant to Section 1203.016, 1203.017, or 1203.018, in lieu of imprisonment in a county jail, the time spent in these facilities or programs shall qualify as mandatory time in jail.

(g) Notwithstanding any other provision of this code as it pertains to the sentencing of convicted offenders, this section does not authorize the sentencing of convicted offenders to any of the facilities or programs mentioned herein.

~~SECTION 1. Section 1270 of the Penal Code is amended to read:~~

~~1270. (a) Any person who has been arrested for, or charged with, an offense other than a capital offense may be released on his or her own recognizance by a court or magistrate who could release a defendant from custody upon the defendant giving bail, including a defendant arrested upon an out-of-county warrant. A defendant who is in custody and is arraigned on a complaint alleging an offense that is a misdemeanor, and a defendant who appears before a court or magistrate upon an out-of-county warrant arising out of a case involving only misdemeanors, shall be entitled to an own recognizance release unless the court makes a finding on the record, in accordance with Section 1275, that an own recognizance release will compromise public safety or will not reasonably ensure the appearance of the defendant as required. Public safety shall be the primary consideration. If the court makes one of those findings, the court shall then set bail and specify the conditions, if any, whereunder the defendant shall be released.~~

~~(b) Article 9 (commencing with Section 1318) shall apply to a person who is released pursuant to this section.~~